IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

THURSDAY, THE 4TH JANUARY 2007 / 14TH POUSHA, 1928

CRL.A.No. 1582 of 2006(C)

SC.125/2001 of ADDL. SESSIONS COURT (ABKARI ACT CASES), KOTTARAKKARA

CP.100/2000 of JUDL.MAGISTRATE OF FIRST CLASS-I, PUNALUR

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APPELLANT: ACCUSED

SADANANDAN S/O.GEORGE, C.NO.803,
CENTRAL PRISON, POOJAPURA,
THIRUVANANTHAPURAM 695012

BY ADV. ADV.NIDHI BALACHANDRAN(STATE BRIEF)

RESPONDENT: COMPLAINANT

THE STATE OF KERALA,
REPRESENTED BY A PUBLIC PROSECUTOR.

BY PUBLIC PROSECUTOR SRI. C.M.NAZAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 04/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.THANKAPPAN, J.

CRL. APPEAL NO. 1582 OF 2006

Dated this the 4th day of January, 2007

JUDGMENT

The appellant is the accused in Sessions Case No.125 of 2001 on the file of the Additional Sessions Court (Abkari Act Cases), Kottarakkara. He faced trial for the offence punishable under Section 8(1) and (2)of the Abkari Act.

2. The prosecution case against the appellant was that on 30.8.1998 at 12.15 p.m., while PW.1, Preventive Officer, Anchal Excise Range, was on patrol duty along with the PW.3, he saw the appellant carrying a newspaper packet and on examining the packet, it was found that the packet contained a black jerry can containing 2 ½ litres of arrack. It was further alleged by the prosecution that the appellant was carrying the arrack without any permit or licence under the provisions of the Abkari Act. To prove the case against the appellant, the prosecution examined PWs.1 to 7 and produced Exts.P1 to P6 and MO.1 can. No oral or documentary evidence was adduced on the side of the defence. The appellant when questioned under Section 313 Cr.P.C. denied the

allegations levelled against him. However, relying on the evidence adduced by the prosecution, the trial court found the appellant guilty of the offence alleged against him, convicted him thereunder and sentenced him to undergo simple imprisonment for a period of two years and to pay a fine of Rs.1,00,000/- and in default of payment of fine, to undergo simple imprisonment for a further period of six months. The appellant was also allowed the benefit of Section 428 Cr.P.C.

3. Heard the learned counsel appearing for the appellant as well as the learned Public Prosecutor. Learned counsel appearing for the appellant submits that the trial court went wrong in placing reliance on the evidence of the prosecution witnesses as they were all excise officials. Learned counsel also seeks leniency in the sentence awarded by the trial court.

4. PW.1, the Preventive Officer of Anchal Excise Range who detected the crime deposed before the court below that while he was on patrol duty, he found the appellant carrying a newspaper packet and on questioning the appellant it was revealed that the packet contained a black jerry can containing 2 ½ litres of arrack. This witness further stated that he arrested the appellant at the spot and collected 300 ml. of arrack in a

bottle of 375 ml. capacity as sample and seized the can as per Ext.P1 mahazar. He further stated that the appellant and the contraband article were subsequently produced before the court. PW.1 also stated that PW.3 had accompanied him during the relevant time.

5. PW.3 was the Excise Guard who had accompanied PW.1 on patrol duty. He stated that the appellant was arrested at the spot and that he had put his signature on Ext.P1 mahazar. His evidence corroborates the version given by PW.1. PW.2 was the Excise Inspector who registered Crime No.29 of 1998 of Anchal Excise Range. PW.4 was the Excise guard who had produced the appellant and the contraband article before the court. PW.5 was examined to prove the seizure mahazar. He turned hostile to the prosecution, but he admitted his signature in Ext.P1 mahazar. PW.6 was the Excise Inspector who conducted the investigation and laid the charge. PW.7 was the Excise Guard who had taken the sample to the laboratory for chemical analysis. Ext.P6 is the chemical analysis report. With regard to the contention that the witnesses were all excise officials, it is seen that the prosecution examined an independent witness to prove the seizure mahazar. Even though this witness turned hostile, he had admitted his signature in Ext.P1 mahazar.

6. On an overall appreciation of the entire evidence, this Court is of the view that the trial court was justified in accepting the evidence of the prosecution witnesses to find the appellant guilty of the offence alleged against him. With regard to the sentence, it is seen that no special circumstance is brought to the notice of this Court for allowing leniency. The trial court awarded a sentence of simple imprisonment for two years and the minimum fine as per the provisions of the Abkari Act. In the above circumstances, no interference is called for in the impugned judgment.

The Crl. Appeal is accordingly dismissed, confirming the conviction and sentence ordered by the trial court.

(K.THANKAPPAN, JUDGE)

sp/

K.THANKAPPAN, J.

CRL.A.NO.1582/2006

JUDGMENT

4TH JANUARY, 2006.